

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT E. TEAT,	§
	§
Defendant Below-	§ No. 303, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0808020520
Plaintiff Below-	§
Appellee.	§

Submitted: August 1, 2011

Decided: October 12, 2011

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 12th day of October 2011, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Robert Teat, filed this appeal from the Superior Court's order denying his motion for modification of sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Teat's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Teat pled guilty in April 2009 to one count of second degree assault and one count of possession of a firearm

during the commission of a felony. The Superior Court sentenced him immediately on the assault charge to five years at Level V incarceration, to be suspended entirely for five years at Level IV (DOC discretion), to be suspended after six months for one year at Level III probation followed by one year at Level II probation. On the weapon offense, the Superior Court sentenced Teat to a three year minimum mandatory term at Level V incarceration. In February 2010, Teat filed a motion seeking modification of his sentence. The Superior Court denied Teat's motion, among other reasons, because his sentence was imposed pursuant to a plea agreement with the State and Teat had provided no additional information to warrant a sentence modification. Teat did not appeal that ruling.

(3) Instead, in May 2010, Teat filed a second motion for modification of sentence. In his motion, Teat asked that any Level IV time be reduced to Level III probation. The Superior Court again denied Teat's motion on the alternative grounds that the motion was both untimely and repetitive and because the sentence imposed was appropriate and Teat had provided no additional information to warrant a modification. This appeal followed.

(4) In his opening brief on appeal, Teat argues that the Superior Court erred in denying his motion for sentence modification as untimely.

Teat contends that his motion only sought a modification of his Level IV partial confinement and that Rule 35(b) provides that the Superior Court may modify or reduce the “term or conditions of partial confinement or probation, at any time.”¹

(5) Teat is correct that a motion seeking modification of the terms of partial confinement is not subject to the 90 day limitation period of Rule 35(b).² Thus, the Superior Court was incorrect in holding that Teat’s motion was untimely. Nonetheless, the Superior Court’s judgment denying Teat’s motion for sentence modification may be affirmed on the independent and alternative grounds that the motion was repetitive³ and Teat had provided no additional information to merit a sentence modification. We find no abuse of the Superior Court’s discretion in denying Teat’s motion on these independent and alternative bases.⁴

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹ Del. Super. Ct. Crim. R. 35(b) (2011).

² See *Kiser v. State*, 2010 WL 5141242 (Del. Dec. 17, 2010).

³ Del. Super. Ct. Crim. R. 35(b) (2011) (providing that the Superior Court will not consider repetitive requests for reduction of sentence).

⁴ See *Torrence v. State*, 2010 WL 3036742 (Del. Aug. 4, 2010).